

REMARKS

This Supplemental Response is further to the Amendment filed March 31, 2004.

I. Status of the Claims

Claims 1-9 and 11-22 are pending in the application.

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II. Telephone Interview

Applicants would like to thank Examiner Hewitt and Supervising Examiner Trammel for all of the courtesies extended in the telephone interviews held on March 9 and March 13, 2004. The terms "transparently transmitting" and "without notifying a user" were discussed. Supervising Examiner Trammel expressed the concern that "without notifying a user" is a negative limitation and renders the claims indefinite. Further, the claims and the art of record were discussed and no agreement was reached.

Applicants respectfully disagree with Supervising Examiner Trammel's contention that the element "without notifying a user" is a negative limitation that renders the claims indefinite. Applicants direct Supervising Examiner Trammel to MPEP § 2173.05(i) which discusses negative limitations:

The current view of the courts is that there is nothing inherently ambiguous or uncertain about a negative limitation. So long as the boundaries of the patent protection sought are set forth definitely, albeit negatively, the claim complies with the requirements of 35 U.S.C. § 112, second paragraph. Some older cases were critical of negative limitations because they tended to define the invention in terms of what it was not, rather than pointing out the invention. ... A claim which ... [recites a] limitation ... in order to exclude the characteristics of the prior art ... was considered definite because ... the boundaries of the patent protection sought were clear. ... Any negative limitation or exclusionary proviso must have basis in the original disclosure. ... **The mere absence of a positive recitation is not a basis for an exclusion.**

MPEP § 2173.05(i) (emphasis added).

Turning to the claims, Applicants submit that the element “without notifying a user” has literal support in the Specification. As set forth in the Detailed Description, a user requests to download content and “License Files are then sent to the user’s computer without notifying the user, and then the content is downloaded or streamed to the user.” Specification, page 8, lines 7-8.

Additionally, Applicants submit that the element of “without notifying a user”, defines the boundaries of patent protection by excluding all systems that explicitly notify a user of “transmitting a license file.” Given the claims as a whole and the specific element at issue, the phrase “without notifying a user” does not define the invention in terms of what it does not do nor is the term inherently ambiguous. Rather, the phrase at issue sets forth the boundaries of the patent protection sought. Thus, the claims were previously amended not for reasons of patentability but to reintroduce the original elements of the claims.

CONCLUSION

In view of the above amendments and remarks, it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved by either a Supplemental Response or a Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Dated: April 5, 2004

Respectfully submitted,

By



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